

# STATE OF MONTANA TERM CONTRACT

Department of Administration  
State Procurement Bureau  
165 Mitchell Building  
PO Box 200135  
Helena, MT 59620-0135

Phone: (406) 444-2575 Fax: (406) 444-2529

## **T.C.# SPB02-32B CREDIT CARD PROCESSING SERVICES**

**This is an Exclusive Contract**

	FROM	August 1, 2002	CONTRACT YEAR	NEW (X)
	TO	July 31, 2005		RENEW ( )
VENDOR ADDRESS	Paymentech, L.P. 1601 Elm Street Dallas, TX 75208		ORDER ADDRESS	Same
ATTN:	Donnie Wells dwells@paymentech.com		ATTN:	
PHONE:	(214) 849-3570 (888) 262-9343 Ext. 3564		PHONE:	
FAX:	(214) 849-3507		FAX:	

Prices: Per Attachments

Delivery: New equipment with 5 days ARO

F.O.B.: Destination

Terms: Per agreement

Remarks:

IFB/RFP No. :02-417B

Brad Sanders, Contracts Officer

**AUTHORIZED SIGNATURE**

# Standard Terms and Conditions

**By submitting a bid, proposal, or limited solicitation, or acceptance of a contract, the vendor agrees to the following binding provisions:**

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**ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES:** The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

**ACCESS AND RETENTION OF RECORDS:** The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

**ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Mont. Code Ann. § 18-4-141.)

**AUTHORITY:** The following bid, request for proposal, limited solicitation, or contract is issued in accordance with Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS:** Any business entity, domestic or foreign, intending to transact business in Montana must apply for authority to do so with the Montana Secretary of State. Foreign business entities are obligated to determine whether they are transacting business in Montana, in accordance with sections 35-1-1026 and 35-8-1001, MCA, and if so, must apply for and receive a certificate of authority and continue to be in good standing with the Secretary of State for the duration of the contract. Violation of these requirements may void the contract. Proof of authority is required. Questions or registration may be accomplished by contacting the Secretary of State at (406) 444-3665 or by e-mail at <http://sos.state.mt.us/css/index.asp>.

**COMPLIANCE WITH LAWS:** The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

**CONFORMANCE WITH CONTRACT:** No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

**DEBARMENT:** The contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

**DISABILITY ACCOMMODATIONS:** The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities.

Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**FACSIMILE RESPONSES:** Facsimile responses will be accepted for invitations for bids or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

**FAILURE TO HONOR BID/PROPOSAL:** If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

**HOLD HARMLESS/INDEMNIFICATION:** The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

**INTELLECTUAL PROPERTY:** All patents and other legal rights in or to inventions arising out of activities funded in whole or in part by the contract must be available to the State for royalty-free and nonexclusive licensing. The contractor shall notify the State in writing of any invention conceived or reduced to practice in the course of performance of the contract. The State shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under the contract.

**LATE BIDS AND PROPOSALS:** Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

**PAYMENT TERM:** All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted, the State is allowed 30 days to pay such invoices.

**RECIPROCAL PREFERENCE:** The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see [www.discoveringmontana.com/doa/ppd](http://www.discoveringmontana.com/doa/ppd) under Reciprocal Preference.

**REFERENCE TO CONTRACT:** The contract (Purchase Order) number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

**SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

**SHIPPING:** Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

**SOLICITATION DOCUMENT EXAMINATION:** Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

**TAX EXEMPTION:** The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

**TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED:** Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

**TERMINATION OF CONTRACT:** Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

**UNAVAILABILITY OF FUNDING:** The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

**U.S. FUNDS:** All prices and payments must be in U.S. dollars.

**VENUE:** This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

**WARRANTIES:** The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

1. Parties
2. Effective Date, Duration and Renewal
3. Services and/or Supplies
4. Consideration/Payment
5. Access and Retention of Records
6. Assignment, Transfer and Subcontracting
7. Hold Harmless/Indemnification
8. Contract Performance Security
9. Fidelity Bond
10. Insurance
11. Workers' Compensation/Independent Contractor
12. Compliance with Laws
13. Contract Termination
14. Liaison and Service of Notices
15. Meetings
16. Choice of Law and Venue
17. Scope, Amendment and Interpretation
18. Execution

**1. PARTIES**

THIS CONTRACT, is entered into by and between the State of Montana, Department of Administration, State Procurement Bureau, (hereinafter referred to as "the State"), whose address and phone number are 125 North Roberts Street, Mitchell Building, Room 165, 406-444-2575 and Paymentech L.P., (hereinafter referred to as the "Contractor"), whose nine digit Federal ID Number, address and phone number are 752830829, 1601 Elm Street, Dallas, TX 75208 and (214) 849-3579.

**THE PARTIES AGREE AS FOLLOWS:****2. EFFECTIVE DATE, DURATION, AND RENEWAL**

- (a) This contract shall take effect on August 1, 2002. The contract shall terminate on July 31, 2005, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)
- (b) This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be extended in one-year intervals or any interval that is advantageous to the State, for a period not to exceed four additional years. This extension is dependent upon legislative appropriations and in no case may this contract run longer than a seven-year period.

**3. SERVICES AND/OR SUPPLIES**

Contractor agrees to provide to the State the credit card processing services as described in RFP02-417B, and as proposed and accepted in contractor response to RFP02-417B.

**4. CONSIDERATION/PAYMENT**

- (a) In consideration for the service to be provided, the State shall pay according to the schedule included in Attachment A. Contractor will provide State with an invoice on a monthly basis and 5 days after the date of the invoice will ACH debit the States designated bank account. Unless otherwise expressly stated in this Agreement, such pricing is based on all transactions qualifying under the Association Rules for the lowest Association interchange rates. For Sales Data that does not qualify for the lowest interchange rates, the standard Association interchange rate will apply, which may be higher for non-qualifying transactions than the qualifying rate shown.
- (b) The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.
- (c) Contractor may terminate this Agreement in either of the following circumstances:
  - a. Refusal of State to pay an undisputed invoice within 120 days provided: (i) the State is provided with a notice of delinquency not sooner than 60 days following the date of invoice; and (ii) if payment has not been made within 90 days of the invoice, then

the State is provided with a second notice of delinquency and an opportunity to make payment within 30 days of the second delinquency notice; or

- b. If Contractor has given six or more "second delinquency notices" in any twelve month period, even if all such second delinquency notices were paid or otherwise cured within the time set forth in that Section.

## **5. ACCESS AND RETENTION OF RECORDS**

- (a) The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)
- (b) The Contractor agrees to create and retain records supporting the services provided for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

## **6. ASSIGNMENT, TRANSFER AND SUBCONTRACTING**

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. Such approval may not be unreasonably withheld. (Mont. Code Ann. § 18-4-141.)

## **7. HOLD HARMLESS/INDEMNIFICATION**

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

- 7.1 LIABILITY OF MERCHANT** - State agrees to be responsible for all charge backs and shall be liable to contractor for any loss which contractor may incur in connection with a charge back.

## **8. CONTRACT PERFORMANCE SECURITY**

Contract performance security in the form of a surety bond in the amount of \$100,000 has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, and will be returned to the Contractor after successful completion of the contract. This security must remain in effect for the entire contract period.

## **9. FIDELITY BOND**

The successful offeror shall purchase and maintain a fidelity bond in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate that provides coverage for fraud, theft, embezzlement, failure to faithfully perform duties, and other dishonest acts of any employee or

agent whose duties are to receive, handle, or have custody of checks, securities, electronic funds, or account for supplies or other property.

## **10. INSURANCE**

**General Requirements:** The contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with the performance of the work by the contractor, agents, employees, assigns, or subcontractors. The insurance shall cover such claims as may be caused by any negligent act or omission.

**Primary Insurance:** The contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.

**Specific Requirements for Commercial General Liability:** The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

**Additional Insured Status:** The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of the contractor, including the insured's general supervision of the contractor; products and completed operations; premises owned, leased, occupied, or used.

**Deductibles and Self-Insured Retentions:** Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) The insured shall reduce or eliminate such deductibles or self-insured retention's as respect to the State, its officers, officials, employees, and volunteers; or (2) The contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**Certificate of Insurance/Endorsements:** Insurance must be placed with an insurer with a Best's rating of no less than A-. The certificate must also include the State's purchase order number or contract number. This insurance must be maintained for the duration of the contract. The State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, must receive all required certificates and endorsements within 10 days from the date of the Request for Documents notice before a contract or purchase order will be issued. Work may not commence until a contract or purchase order is in place. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.



**11. WORKERS' COMPENSATION/INDEPENDENT CONTRACTOR**

Contractors are required to maintain workers' compensation or an independent contractors exemption covering the Contractor and/or employees while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Neither the Contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire contract period. A renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, upon expiration.

**12. COMPLIANCE WITH LAWS**

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

**13. CONTRACT TERMINATION**

- (a) The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform this contract to generally accepted standards for such services in the Card processing industry.
- (b) The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

**14. LIAISON AND SERVICE OF NOTICES**

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison who will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this contract shall be coordinated between the State's liaison and the Contractor's liaison.

Brad Sanders will be the liaison for the State.  
State Procurement Bureau  
125 North Roberts Street  
Mitchell Building, Room 165  
Helena, Montana 59620-0135  
(406) 444-2575 - Telephone  
(406) 444-2529 - Fax #

Donnie Wells will be the liaison for the Contractor.  
1601 Elm Street Suite 700  
Dallas TX 75208  
(888) 262-9343 x 3564  
(214) 849-3570  
(214) 849-3507 - Fax #

The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints will first be directed to the liaison.

**15. MEETINGS**

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted.

Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

**16. CHOICE OF LAW AND VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

**17. SCOPE, AMENDMENT AND INTERPRETATION**

- (a) This contract consists of 8 numbered pages, any Attachments as required, RFP #02-417B as amended and the Contractor's response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.
- (b) These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

## 18. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

**MONTANA DEPARTMENT OF ADMINISTRATION    PAYMENTECH, L.P.**

By: PTI General Partner, LLC, its general partner

BY: \_\_\_\_\_  
(Name/Title)

BY: \_\_\_\_\_  
(Name/Title)

BY: \_\_\_\_\_  
(Signature)

BY: \_\_\_\_\_  
(Signature)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Approved as to legal content:

Legal Counsel \_\_\_\_\_ (Date)  
Department of \_\_\_\_\_

Approved as to form:

Contracts Officer (Date)  
State Procurement Bureau

**ATTACHMENT A****Merchant:** State of Montana**TRANSACTION FEES & EQUIPMENT PRICING****1. Discount Rate Information (Interchange & Assessment Pass-thru)**

Interchange & Assessments	<input checked="" type="checkbox"/>
Additional Percentage:	
Paymentech settled item fee:	\$0.25
Diners / Carte Blanche Rate (PTI Settled):	3.20%
JCB Rate (PTI Settled):	3.00%
(Discount Monthly)	
Frequency:	

**2. Bank Card Authorization Fees**

Voice Authorizations	\$0.00
Electronic Authorizations:	
Dial Line – (Local, “950”, WATTS)	\$0.00
TCP/IP (Frame Relay)	
Lease Line	
CDPD – (Wireless)	

**3. Non Bank Card Fees**

Diners	\$0.00	
JCB	\$0.00	
American Express	\$0.04	(Auth only)
Discover	\$0.04	(Auth only)
Scan / Check Service		
EBT		
Debit		
Private Label		
Other:		

**4. Initiation and Service Fees**

Annual Fee	\$0.00	Monthly Help Desk Fee	\$0.00
Application Fee	\$0.00	Monthly Service Fee	\$0.00
Rush Fee	\$0.00	Min. Monthly Discount Fee	\$0.00
On-Site Install/Training Fee	\$0.00	Chargeback Processing Fee	\$0.00
Debit Set-Up Fee	\$0.00	Insufficient Funds Fee	\$0.00
Pin Pad Encryption Fee	\$0.00	Supply Fee:	\$0.00

## 5. Equipment Fees

Equipment	Type	Qty.	Rate (Per Unit)	Purch .	Northern Lease	PTI Rent
Terminal	Tranz 330		\$400.00			
Printer	P900 Printer		\$275.00			
Pin Pad						
Accessories						
Software						
Imprinters						
Replacements	In Warranty (1 year)	EA.	\$30.00	X	X	X
	Out of Warranty (1+ yrs or existing) Non-VeriFone Equipment	EA.	\$200.00	X	X	X
	Out of Warranty (1+ yrs or existing) VeriFone Equipment	EA.	\$135.00	X	X	X
Other				N/A	N/A	N/A